

1-1 By: Ellis, Schwertner S.B. No. 1292
 1-2 (In the Senate - Filed March 7, 2013; March 13, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 11, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 4, Nays 0; April 11, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Whitmire	X			
1-9 Huffman	X			
1-10 Carona			X	
1-11 Hinojosa	X			
1-12 Patrick			X	
1-13 Rodriguez	X			
1-14 Schwertner			X	

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1292 By: Rodriguez

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to DNA testing of biological evidence in certain capital
 1-20 cases.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Article 38.43, Code of Criminal Procedure, is
 1-23 amended by adding Subsections (i), (j), (k), (l), and (m) to read as
 1-24 follows:

1-25 (i) Before a defendant is tried for a capital offense in
 1-26 which the state is seeking the death penalty, the Department of
 1-27 Public Safety shall perform DNA testing, in accordance with the
 1-28 department's capabilities at the time the testing is performed, or
 1-29 have DNA tested by a laboratory accredited under Section 411.0205,
 1-30 Government Code, on all biological evidence that was collected as
 1-31 part of an investigation of the offense. The Department of Public
 1-32 Safety shall pay for all DNA testing performed in accordance with
 1-33 this subsection.

1-34 (j) As soon as practicable after the defendant is charged
 1-35 with a capital offense, or on a motion by the state or the defendant
 1-36 in a capital case, the court shall order the state and the defendant
 1-37 to meet and confer about which biological materials collected as
 1-38 part of an investigation of the offense qualify as biological
 1-39 evidence that is required to be tested under Subsection (i). If the
 1-40 state and the defendant agree on which biological materials
 1-41 constitute biological evidence, the biological evidence shall be
 1-42 tested in accordance with Subsection (i). If the state and the
 1-43 defendant do not agree on which biological materials qualify as
 1-44 biological evidence, the state or the defendant may request the
 1-45 court to hold a hearing to determine the issue. On receipt of a
 1-46 request for a hearing under this subsection, the court shall set a
 1-47 date for the hearing and provide written notice of the hearing date
 1-48 to the state and the defendant. At the hearing, a request by the
 1-49 defendant to test biological material is prima facie evidence that
 1-50 the biological material constitutes biological evidence that is
 1-51 required to be tested under Subsection (i).

1-52 (k) If an item of biological evidence is destroyed as a
 1-53 result of DNA testing performed under Subsection (i), the
 1-54 laboratory that tested the evidence must provide to the defendant
 1-55 any documentation related to the testing of the evidence and the
 1-56 results of that testing.

1-57 (l) A defendant is not entitled to a new trial or to a new
 1-58 sentencing proceeding based solely on a violation of Subsection
 1-59 (i), (j), or (k).

1-60 (m) A defendant may have another laboratory accredited

2-1 under Section 411.0205, Government Code, perform additional
2-2 testing of any biological evidence required to be tested under
2-3 Subsection (i). On an ex parte showing of good cause to the court, a
2-4 defendant may have a laboratory accredited under Section 411.0205,
2-5 Government Code, perform testing of any biological material that is
2-6 not required to be tested under Subsection (i). The defendant is
2-7 responsible for the cost of any testing performed under this
2-8 subsection.

2-9 SECTION 2. Subsections (i), (j), (k), (l), and (m), Article
2-10 38.43, Code of Criminal Procedure, as added by this Act, apply only
2-11 to a trial that commences on or after the effective date of this
2-12 Act, regardless of whether the alleged offense was committed
2-13 before, on, or after that date.

2-14 SECTION 3. This Act takes effect September 1, 2013.

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